

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

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Person To Contact:

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PLR-108855-06

Date: February 15, 2007

### LEGEND:

Trust 1 =

Trust 2 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Year 1 =

Bank 1 =

Bank 2 =

Corporation =

Consultant =

Firm =

Director =

Trust Officer =

Dear :

This is in reply to a letter requesting an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration regulations for Trusts 1 and 2 (collectively, the "Trusts") to file elections under § 860D(b)(1) of the Internal Revenue Code to be treated as Real Estate Mortgage Investment Conduits (REMICs).

**FACTS:**

The Trusts were established on or about Date 1. The creation of the Trusts is evidenced by Prospectus Supplements and Pooling and Servicing Agreements, which state the intention of the Trusts to make a REMIC election and designate the regular interests and residual interests created by the Trusts.

At the time of closing, Bank 1 was appointed as Trustee for the Trusts, Corporation was appointed as Tax Matters Person for the Trusts, and Bank 2 was appointed as Master Servicer and Securities Administrator for the Trusts. As Trustee, Bank 1 was required to sign the REMIC tax returns. Under the Pooling and Service Agreement, Corporation was responsible for making the REMIC elections and preparing, signing and filing the REMIC returns on behalf of the Trusts. As Master Servicer and Securities Administrator, Bank 2 was responsible for all of the other administrative actions for the Trusts. Corporation engaged Consultant to prepare the Year 1 REMIC tax returns for the Trusts. Corporation also engaged Firm to perform a technical review of the Year 1 REMIC tax returns and sign as paid tax preparer.

Firm timely filed Forms 8736, *Application for Automatic Extension of Time to File U.S. Returns for a Partnership, REMIC, or for Certain Trusts*, and Forms 8800, *Application for an Additional Extension of Time to File U.S. Returns for a Partnership, REMIC, or for Certain Trusts*, for the Trusts. The filing of these extension forms evidence the intention of the Trusts to file Forms 1066 and make REMIC elections.

Firm reviewed and signed (as paid tax preparer) the Year 1 REMIC tax returns for the Trusts on or about Date 2 and mistakenly forwarded the tax returns to Bank 2 on Date 3. Firm served as the tax preparer for other REMICs for which Bank 2 was the Trustee. Firm mistakenly forwarded the REMIC returns to Bank 2 believing that Bank 2 was also Trustee for these Trusts.

It is unusual for Bank 1 to act as trustee for a REMIC arrangement in the absence of other administrative duties. Due to the unusual nature of their duties with respect to the Trusts, Bank 1 did not recognize that it was the responsible party to sign the return as

Trustee. Accordingly, Bank 1 did not monitor the return preparation process or realize that the return that was due on Date 4 had not been received for reviewing, signing, and filing before Date 4.

On or about Date 5, Firm discovered the failure to timely file Forms 1066 when Bank 2 contacted Firm's Director to notify Firm that it had not filed the Year 1 REMIC tax returns. Bank 2 signed and filed the Year 1 REMIC tax returns on Date 5. In the last week of Date 6, Bank 2 notified the Director that it was not Trustee of the Trusts and not responsible for signing and filing the Trusts' REMIC tax returns. Director immediately began the process of filing a request for a private letter ruling under Treas. Reg. § 301.9100 to obtain an extension of time to file Forms 1066 and make REMIC elections for the Trusts.

The Firm submitted the affidavit of its Director and Bank 1 submitted the affidavit of a Trust Officer in support of these requested rulings.

#### **LAW AND ANALYSIS:**

Section 860D(b)(1) of the Code provides that an entity otherwise meeting the requirements of a REMIC under § 860D(a) may elect to be treated as a REMIC for its first taxable year by making an election on its return for that year. Section 1.860D-1(d) of the regulations provides that a qualified entity elects REMIC status by timely filing a Form 1066, U.S. Real Estate Mortgage Investment Conduit Income Tax Return, by the 15<sup>th</sup> day of the fourth month following the close of the first tax year of its existence. This regulation also provides a reference to § 301.9100-1 for rules regarding extensions of time for making elections.

Section 1.860F-4(b)(1) of the regulations provides that the due date and any extensions for filing a REMIC's annual tax return are determined as if the REMIC were a partnership. Therefore, pursuant to § 1.6031-1(e)(2), a REMIC's annual return must be filed on or before the 15<sup>th</sup> day of the fourth month following the close of the taxable year, unless an extension is granted.

Section 301.9100-1(c) of the regulations provides, in part, that the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election (defined in § 301.9100-1(b) as an election whose due date is prescribed by regulations or by a revenue ruling, a revenue procedure, a notice, or an announcement published in the Internal Revenue Bulletin), or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Code except E, G, H, and I.

Sections 301.9100-3(a) through (c)(1)(i) of the regulations set forth rules that the Internal Revenue Service generally will use to determine whether, under the particular facts and circumstances of each situation, the Commissioner will grant an extension of

time for regulatory elections that do not meet the requirements of § 301.9100-2. Section 301.9100-3(b) provides that subject to paragraphs (b)(3)(i) through (iii) of § 301.9100-3, when a taxpayer applies for relief under this section before the failure to make the regulatory election is discovered by the Service, the taxpayer will be deemed to have acted reasonably and in good faith; and § 301.9100-3(c) provides that the interests of the government are prejudiced if granting relief would result in the taxpayer having a lower tax liability in the aggregate for all years to which the regulatory election applies than the taxpayer would have had if the election had been timely made (taking into account the time value of money).

**CONCLUSION:**

Based on the information submitted and representations made, we conclude that the Trusts have satisfied the requirements for granting a reasonable extension of time to allow them to make elections under § 860D of the Code to be treated as REMICs for Year 1 and subsequent taxable years. Therefore, the Trusts are granted a period of time not to exceed 30 days from the date of this letter to submit Forms 1066.

This ruling is limited to the timeliness of making the election under § 860D(b) of the Code. This ruling does not relieve the Trusts from any penalties they may owe as a result of their failure to file their federal income tax return on time. This ruling's application is limited to the facts, representations, Code sections, and regulations cited herein. While this office has not verified any of the material submitted in support of the request for ruling, it is subject to verification on examination. No opinion is expressed with regard to whether the Trusts qualify as REMICs under subchapter M, part I, of the Code.

No opinion is expressed with regard to whether the Trusts' tax liability is not lower in the aggregate for all years to which the election applies than such tax liability would have been if the election had been timely made (taking into account the time value of money). Upon audit of the federal income tax returns involved, the director's office will determine the Trusts' tax liability for the years involved. If the director's office determines that the Trusts' liability is lower, that office will determine the federal income tax effect.

A copy of this letter is being forwarded to the service center where the Trusts file their returns with instructions that although their Forms 1066 were not timely filed, the Trusts are treated as having made timely elections under § 860D(b) of the Code.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayers requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

\_\_\_\_\_/s/\_\_\_\_\_  
Elizabeth A. Handler  
Branch Chief, Branch 1  
Office of Associate Chief Counsel  
(Financial Institutions and Products)

Enclosures:

Copy of this letter  
Copy for § 6110 purposes